

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re Application of

EFFECTEN-SPIEGEL AG and  
ARFB ANLEGBERSCHUTZ UG,

Petitioners,

to Take Discovery Pursuant to 28 U.S.C.  
§ 1782 in Aid of Foreign Litigants or  
Proceedings.

Civil Action No. \_\_\_\_\_

**APPLICATION FOR ORDER ALLOWING  
DISCOVERY PURSUANT TO 28 U.S.C. § 1782**

Petitioners Effecten-Spiegel AG and ARFB Anlegererschutz UG (“Petitioners”) respectfully move this Court for an order pursuant to 28 U.S.C. Section 1782 allowing Petitioners’ undersigned U.S. counsel to issue subpoenas pursuant to Federal Rules of Civil Procedure 30 and 45 directing Merrill Lynch, Pierce Fenner& Smith, Inc. (“MLPFS”) and Merrill Lynch & Co. (“ML”) to produce documents, and directing John Thain (“Thain”) to appear for a deposition and produce documents, all for use in Petitioners’ actions against Porsche Automobil Holding S.E. that is currently pending before the Higher Regional Court in Celle, Federal Republic of Germany (the “German Actions”), captioned *Effecten-Spiegel, et al. v. Porsche Automobil Holding S.E.*, Docket No. 18 O 175/15, *ARFB Anlegererschutz UG v. Porsche Automobil Holding S.E.*, Docket No. 18 O 96/15 (“*ARFB I*”); and *ARFB Anlegererschutz UG v.*

*Porsche Automobil Holding S.E. and Volkswagen AG*, Docket No. 18 O 89/15 (“*ARFB II*”), and for use in certain related actions.<sup>1</sup>

Petitioners’ application meets all of the statutory and discretionary requirements necessary to obtain discovery under Section 1782. MLPFS, ML and Thain can be found in this District. Petitioner seeks the discovery for use in prosecuting a proceeding that is pending in a foreign tribunal. MLPFS, ML and Thain are not parties to the German Action, Petitioner is not attempting to circumvent any requirements of the Higher Regional Court, German courts are receptive to this form of discovery, and the discovery is not unduly burdensome or intrusive. In further support of this application, Petitioner relies on its memorandum of law and the Declaration of Andreas W. Tilp, with accompanying exhibits, all submitted contemporaneously herewith. A proposed Order is attached hereto.

WHEREFORE, Petitioners respectfully pray that this Court enter an order:

1. Granting Petitioners’ application for discovery from MLPFS, ML and Thain pursuant to 28 U.S.C. Section 1782;
2. Authorizing Petitioners to take discovery relating to the issues identified in his application from MLPFS and ML in accordance with the Federal Rules of Civil Procedure and the Rules of this Court, including by: (a) serving on each of them, respectively, subpoenas for production of the documents listed at Exhibit A to the proposed subpoenas accompanying the Declaration of Andreas W. Tilp; (b) serving on John Thain a subpoena for documents and deposition testimony; and (c) serving additional subpoenas on current or former MLPFS or ML employees for the production of documents and/or depositions as Petitioner may reasonably

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<sup>1</sup> The related cases are: *Dr. Rall v. Porsche Automobil Holding S.E.*, Docket No. 18 O 333/14; *Elliott Associates, L.P. et al v. Porsche Automobil Holding SE*, Docket No. 18 O 159/13; and *HWO GmbH v. Porsche Automobil Holding SE*, Docket No. 18 O 174/15.

deem appropriate to seek discovery in conformity with the subpoenas authorized herein;

3. Directing responding parties to comply with such subpoenas in accordance with the Federal Rules of Civil Procedure and the Rules of this Court;
4. Appointing the undersigned to issue, sign and serve such subpoenas, and ordering that testimony in this matter may be taken before any certified court reporter authorized to take testimony and administer oaths in the State of New York, and that such court reporters are hereby authorized to take testimony in this matter;
5. Providing that this Court shall retain such jurisdiction as is necessary to effectuate the terms of such subpoenas.

New York, New York

March 13, 2018

Respectfully submitted,

STONE BONNER & ROCCO LLP

By: /s/ Ralph M. Stone

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